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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/572,809

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Michael Keith Ching

4906

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7/590

04/09/2009

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EXAMINER

REESE, DAVID C

ART UNIT

PAPER NUMBER

3677

MAIL DATE

DELIVERY MODE

04/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/572,809

**Applicant(s)**

CHING, MICHAEL KEITH

**Examiner**

David C. Reese

**Art Unit**

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

THIS FINAL ACTION IS RESPONSIVE TO THE AMENDMENT FILED 2/10/2009.

- Claim 11 was amended.
- Claims 11-18 are pending.

#### ***Specification***

[1] The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the amended subject matter including “in a direction of linear travel of said nut” is not found in the specification.

#### ***Claim Rejections - 35 USC § 102***

[2] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[3] Claims 11-18 are rejected under 35 U.S.C. 102(b) as anticipated by Brushaber, US-4,645,422, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

As for Claim 1, Brushaber discloses of an apparatus for preventing removal of, or tampering with, a construction fitting comprising:

two construction element engaging components (27,28);

a fastener (22) for connecting said two construction element engaging components to one another, said fastener comprising a bolt (22) extending between said two construction element engaging components and a nut (32) for tightening on said bolt (22) rigidly connecting said two construction element engaging components with a gap therebetween, said nut (32) having a first side (the left side of 32) [facing in a direction of linear travel of said nut (32) when said nut (32) is tightened onto said bolt (22)]\* (see response to arguments for examiner's interpretation of this statement) and a second side (the right side of 32) opposed to said first side (left side of 32).

a body portion (50) for at least partially covering said nut (32) for preventing access thereto by an unfastening tool, said body portion extending from said nut to a position alongside said bolt within said gap; and,

locking means (66) movable relative to said body portion (50) between a first position, wherein said apparatus is removable from said construction fitting, and a second position wherein said apparatus is prevented from being removed from said construction fitting, said locking means (66) extending, in said second position, from said body portion in a direction toward said bolt (22) with said gap, said locking means (66) being located beyond said first side

(left side of 32) of said nut (32) [in the direction of linear travel when said apparatus for preventing removal of, or tampering with, a construction fitting is locked]\* (see response to arguments for examiner's interpretation of this statement).

Re: Claim 12, wherein said locking means (66) is movable within a bore (38) in said body portion (32).

Re: Claim 13, wherein said locking means (66) is a screw-threaded element.

Re: Claim 14, wherein said locking means (66) is a pin lockable to said body portion (32) in said second position.

Re: Claim 15, wherein said locking means (66) is accessible and movement is effected, via a shaped tool (80).

Re: Claim 16, wherein said locking means (66) and said shaped tool (80) have respective key and keyhole elements engagable for moving said locking means from said second position to said first position.

Re: Claim 17, wherein said body portion (32) surrounds, in use, substantially all otherwise exposed surfaces of said nut (32) of said construction fitting said body portion including a bore through which a free end of said bolt extends.

Re: Claim 18, wherein said body portion (32) and said locking means (66) are made of metal.

#### ***Response to Arguments***

[4] Applicant's amendment and arguments filed 2/10/2009 regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. In the instant case, the examiner maintains that the prior art of Brushaber remains anticipatory towards the current

amended claims. More specifically, the examiner maintains that Brushaber does indeed disclose of said nut (32) having a first side (the left side of 32) [facing in a direction of linear travel of said nut (32) when said nut (32) is tightened onto said bolt (22)]\* and a second side (the right side of 32) opposed to said first side (left side of 32) and with said locking means (66) being located beyond said first side (left side of 32) of said nut (32) [in the direction of linear travel when said apparatus for preventing removal of, or tampering with, a construction fitting is locked]\*.

The above statements in brackets are for use, process recitations. In the instant case, the prior art of Brushaber needs to only possess the structural limitations since it is possible in Brushaber to attach the nut and screw as well as locking means without moving the nut in any direction thus negating the need for any "facing in a direction of linear travel, etc". Examiner recommends that applicant attempt to further define the nut by adding further structural limitations instead of attempting to define structure by the means by which to create or put together the device. The determination of patentability in a product-by-process claim is based on the product itself, even though the claim may be limited and defined by the process. Thus, it is the structure of the final product that is pertinent, and in the instant case, the examiner maintains that the Brushaber discloses a nut with a first and second side, with the locking means being found beyond the first side.

***Conclusion***

**[5] THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**[6]** Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached at (571) 272-6987. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Reese

/D. C. R./  
Examiner, Art Unit 3677

/Victor Batson/  
Supervisory Patent Examiner, Art Unit 3677